

## Environmental Protection Agency

## § 70.12

(D) Failure to collect, retain, or allocate fee revenue consistent with § 70.9 of this part; or

(E) Failure in a timely way to act on any applications for permits including renewals and revisions.

(iii) Where the State fails to enforce the part 70 program consistent with the requirements of this part, including the following:

(A) Failure to act on violations of permits or other program requirements;

(B) Failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; or

(C) Failure to inspect and monitor activities subject to regulation.

(d) *Federal collection of fees.* If the Administrator determines that the fee provisions of a part 70 program do not meet the requirements of § 70.9 of this part, or if the Administrator makes a determination under paragraph (c)(1) of this section that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under title V of the Act, collect reasonable fees to cover the Administrator's costs of administering the provisions of the permitting program promulgated by the Administrator, without regard to the requirements of § 70.9 of this part.

### § 70.11 Requirements for enforcement authority.

All programs to be approved under this part must contain the following provisions:

(a) *Enforcement authority.* Any agency administering a program shall have the following enforcement authority to address violations of program requirements by part 70 sources:

(1) To restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.

(2) To seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit.

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, according to the following:

(i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than \$10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.

(ii) Criminal fines shall be recoverable against any person who knowingly violates any applicable requirement; any permit condition; or any fee or filing requirement. These fines shall be recoverable in a maximum amount of not less than \$10,000 per day per violation.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than \$10,000 per day per violation.

(b) *Burden of proof.* The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent required under the Act.

(c) *Appropriateness of penalties and fines.* A civil penalty or criminal fine assessed, sought, or agreed upon by the permitting authority under paragraph (a)(3) of this section shall be appropriate to the violation.

### § 70.12 Enforceable commitments for further actions addressing greenhouse gases (GHGs).

(a) *Definitions.* (1) *Greenhouse Gases (GHGs)* means the air pollutant as defined in § 86.1818-12(a) of this chapter as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons,

perfluorocarbons, and sulfur hexafluoride.

(2) All other terms used in this section shall have the meaning given in § 70.2.

(b) *Further action to regulate GHGs under the title V program*—(1) *Near term action on GHGs.* The Administrator shall solicit comment, under section 307(b) of the Act, on promulgating lower GHGs thresholds for applicability under § 70.2. Such action shall be finalized by July 1, 2012 and become effective July 1, 2013.

(2) *Further study and action on GHGs.* (i) No later than April 30, 2015 the Administrator shall complete a study projecting the administrative burdens that remain with respect to stationary sources for which GHGs do not constitute a pollutant subject to regulation. Such study shall account, among other things, for permitting authorities ability to secure resources, hire and train staff; experiences associated with GHG permitting for new types of sources and technologies; and, the success of streamlining measures developed by EPA (and adopted by the states) for reducing the permitting burden associated with such stationary sources.

(ii) Based on the results of the study described in paragraph (b)(2)(i) of this section, the Administrator shall propose a rule addressing the permitting obligations of such stationary sources under § 70.2. The Administrator shall take final action on such a rule no later than April 30, 2016.

(iii) Before completing the rule described in paragraph (b)(2)(ii) of this section, the Administrator shall take no action to make the pollutant GHGs subject to regulation at stationary sources that emit or have the potential to emit less than 50,000 tpy CO<sub>2</sub>e (as determined using the methodology described in § 70.2.)

[75 FR 31607, June 3, 2010]

#### APPENDIX A TO PART 70—APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

This appendix provides information on the approval status of State and Local operating Permit Programs. An approved State part 70 program applies to all part 70 sources, as defined in that approved program, within such

State, except for any source of air pollution over which a federally recognized Indian Tribe has jurisdiction.

#### Alabama

(a) Alabama Department of Environmental Management:

(1) Submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on July 19, 1996; April 9, 1997; August 4, 1999; January 10, 2000; and May 11, 2001. The rule revisions contained in the July 19, 1996; January 10, 2000; and May 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The State is hereby granted final full approval effective on November 28, 2001.

(b) City of Huntsville Division of Natural Resources:

(1) Submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on March 21, 1997; July 21, 1999; December 4, 2000; February 22, 2001; April 9, 2001; and September 18, 2001. The rule revisions contained in the March 21, 1997; April 9, 2001; and September 18, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The City is hereby granted final full approval effective on November 28, 2001.

(c) Jefferson County Department of Health:

(1) Submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on February 5, 1998; September 20, 1999; August 8, 2000; March 30, 2001; May 18, 2001; and September 11, 2001. The rule revisions contained in the August 8, 2000; May 18, 2001; and September 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The County is hereby granted final full approval effective on November 28, 2001.

(d) For any permitting program located in the State, insofar as the permitting threshold provisions concern the treatment of sources of GHG emissions as major sources for purposes of title V, EPA approves such provisions only to the extent they require permits for such sources where the source emits or has the potential to emit at least 100,000 tpy CO<sub>2</sub>e, as well as 100 tpy on a mass basis, as of July 1, 2011.